Missouri
Department of
Natural Resources

Response to Comment(s)
On Rule in Development

Rule number: 10 CSR 10-6.362

Rule Title: Clean Air Interstate Rule Annual NOx Trading Program

Type of rulemaking: New Rule

Response to Comments From Clean Air Interstate Rule Workgroup

Comment: The language in the applicability section needs to be amended to match final language in Environmental Protection Agency (EPA's) revised Clean Air Interstate Rule (CAIR).
Response: The program agrees with the comment to incorporate the changes from EPA's revised rule. The program intends to change the language to read:

Except as provided in subsections (B) and (C) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the startup of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

Comment: The low emitter and low run hour exemptions in the proposed rule draft should be voluntary.
Response: The program agrees with this comment and proposes the language below to reflect a voluntary exemption.

(B) Low Emission – Low Run Hour Exemptions. The provisions of this subsection will apply only to units that request exemption under this subsection and have such request approved by the staff director.

Comment: Language should be added to the energy efficiency and renewable energy set-aside section.
Response: The program agrees with this comment and will include the language as commented.

Comment: Several units were left off of Table 1 in the draft rule.
Response: The program is working with the affected sources and the workgroup to include the units that are affected by this rule.

Comment: The incorporation by reference of 40 CFR 96 Subpart CC also incorporates 40 CFR 96 Subpart EE because of a reference within Subpart CC. Does the program intend to include this reference?

Response: The program did not intend to reference Subpart EE, which is EPA's allocation method and timing of recordation. EPA amended this language in the most recent model rule. The program will proposed the language below to remove any reference to Subpart EE. Subpart EE is not needed as it has been replaced by the provisions in Section 3 below.

(A) All of the subsections, unless otherwise noted in this section, of 40 CFR 96 Subparts BB, CC (excluding any reference to 40 CFR 96 Subpart EE), DD, FF, GG, and II promulgated as of July 1, 2005 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

Response to Comments From the City of Higginsville.

Comment: Higginsville's units qualify as Low Mass Emission (LME) units as defined in 40 CFR Part 75, as an alternative to installation of a Continuous Emission Monitoring System (CEMs). However, the default emission rates are more than 4 times that of the Subpart GG tested emission rates. Based on this factor, the City of Higginsville would either have to pay for unit specific testing or accept the default emission rate. The units specific testing is to be conducted every five years and will cost an estimated $150,00 in fuel alone, based on current fuel prices. Testing company charges have historically been $15,000-$20,000 per unit. This total amount would have to be compared with the market price of the additional allowances required by the default emission rates. The additional operating hours required for testing would also require the purchase of additional allowances, not otherwise needed. Both the emissions produced by unit specific testing and additional allowances required by the default rates, would unnecessarily remove allowances from the market, thereby constraining the market.
Response: The program agrees with Higginsville's comments regarding monitoring for low emitting or low run time units. However, the workgroup's main concern clearly was the inclusion of Missouri in EPA's regional trading programs. EPA has stated in comments submitted to this rule that there can be no changes to the exemptions if Missouri wishes to be part of the EPA administered trading program.

Response to Comments From the City of Chillicothe.

Comment: Chillicothe Municipal Utilities (CMU), located in Chillicothe, Missouri operates for identical combustion turbines. The four combustion turbines are subject to the proposed Clean Air Interstate Rules (CAIR) because they serve a generator greater than 25 MW. However, if each engine had its own generator, they would not be subject to any of the proposed regulations.

CMU supports the exemption language referenced in each of the proposed State of Missouri rules for units that qualify as low emission or low run hour units. The exemption language allows periodic operation of such units when needed, without compromising the goals of CAIR.

Economics usually dictate when combustion turbines operate, in order to limit customer exposure to extremely high market prices (when other, cheaper sources of power are not available). There are other times, and usually in the summer months, when the normal flow of power is curtailed or interrupted due to transmission problems or storms. These interruptions require a back up source of power that combustion turbines can provide until problems are corrected. However, to operate them for extended periods of time is cost prohibitive. CMU's turbines historically are used less than ½ to 1% of the time available in a year.

Currently, each of the combustion turbine engines can operate up to 400 hours during the May to September months and remain in compliance with 10 CSR 10-6.350. The proposed language in 10 CSR 10-6.364 would change this to 350 hours. Actual run time during the ozone season is about 40 hours per engine, or less than 10% of the run time needed to retain the proposed exemption. With the exemption language in the proposed rules, compliance will continue to be achieved by keeping track of each of the combustion turbine engine's run hours.

Without the exemption language in the proposed rules, additional monitoring, recordkeeping and reporting will be required. CMU would also be required to purchase NOx and SO2 allowances at a substantial cost to CMU and the community it serves, but without any perceived environmental benefit.

Without the exemption language, CMU will be required to report emissions based on continuous emission monitoring data, site specific test results or use default emission values allowed for Low Mass Emission (LME) units. Each of these options for reporting emissions created additional monitoring and recordkeeping, adding a substantial cost to CMU for every hour of operation. If all four turbines were to be tested to report emissions using site specific emission rates, the estimated cost for the fuel could reach $336,000. And the amount of NOx emissions to perform the test would exceed the actual emissions reported for 2004. Without the factors; however, these emission factors overstate emissions compared to actual emissions. Other costs to account for additional recordkeeping, quarterly emission reporting and annual flow meter calibrations is expected to raise the actual cost to CMU to three to four times the market price of the allowances. As the rules are proposed, the exemption for low emission or low run hour units avoids the added cost to otherwise prove their emissions are indeed low.

With the proposed exemption, CMU will continue to avoid participation in the SO2 trading program. The proposed exemption allows CMU to avoid the cost for monitoring, recordkeeping, reporting and trading of SO2 emissions for what historically has averaged less than a 0.25 tons of SO2 emissions per year over the last 5 years from all four combustion turbines combined. Such a small source should continue to be exempt.

Independent of the above, the emissions from the CMU turbines are not expected to influence the goals of CAIR. The air quality impact from these units, because of their short stacks and low emissions, will have no quantifiable effect on any instate or downwind ozone non-attainment area affected by CAIR. CMU's average NOx emissions for the past 5 years were 8.3 tons (0.014% of the annual proposed statewide budget) and 6.8 tons for the ozone season (0.024% of the ozone season proposed statewide budget). Response: The program agrees with CMU's comments regarding monitoring for low emitting or low run time units. However, the workgroup's main concern clearly was the inclusion of Missouri in EPA's regional trading programs. EPA has stated in comments submitted to this rule that there can be no changes to the exemptions if Missouri wishes to be part of the EPA administered trading program.

Response to Comments From the U.S. Environmental Protection Agency.

Comment: Subsection (1)(A) – This provision needs to be revised to reflect the applicability provisions finalized on April 28, 2006. In addition, EPA notes that some of the cross-references in the current Subsection (1)(A) are not correct. Subsection (1)(A)1. – "Except as provided in subsections (B) and (C) of this section…" should be replaced with "Except as provided in **paragraph 2.** of this subsection...". Retired units continue to be CAIR NOx units. Subsection (1)(A)2. – "…the unit shall be subject to subsection (A) of this section…" should read "…the unit shall be subject to **paragraph 1.** of this subsection...".
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (1)(B) – This entire provision must be removed. Under 40 CFR 51.123 (o), states that want to participate in the EPA-administered CAIR NOx Annual Trading Program may modify certain sections of the model rule. Because 40 CFR 51.123(o) does not allow modifications of the applicability provisions of the CAIR NOx annual model rule, the provision "Low Emission -- Low Run Hour Exemptions" in Missouri's CAIR NOx Annual rule is not approvable and will need to be removed if Missouri wants to participate in the EPA-administered CAIR NOx Annual Trading Program.
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (1)(C) – EPA suggests that Missouri incorporate by reference the retired unit exemption provision (§96.105) in the model rule rather than reproducing in Missouri's rule the language of the model rule provision. Incorporation by reference would remove the potential for unintentional errors and facilitate Missouri's adoption of any future changes in the model rule provision. If Missouri prefers to reproduce the exemption provision, the corrections below for Subsections (1)(C) and (D) should be made.
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (1)(C)1.A – "CAIR NOx opt-in unit" should read "CAIR NOx opt-in unit under subpart II of 40 CFR Part 96 as incorporated by reference in section (3) of this rule", "CAIR NOx Trading Program" should read "CAIR NOx **Annual** Trading Program", and "...§96.106(c)(4) through (8), §96.107, …" should read "…§96.106(c)(4) through (7), §96.107, §96.108,…" .
Response: This section was removed in response to another comment.

Comment: Subsection (1)(C)1.C. – "subpart CC" should read "subpart CC **of 40 CFR Part 96**"
Response: This section was removed in response to another comment.

Comment: Subsection (1)(C)2.D. – "CAIR NOx Trading Program" should read "CAIR NOx **Annual** Trading Program".
Response: This section was removed in response to another comment.

Comment: Subsection (1)(C)2.G – "subpart HH" should read "subpart HH **of 40 CFR Part 96**", "subsection (4) of this rule" should read "section (4) of this rule", and "…commences operation and commercial operation…" should read "…commences commercial operation…".
Response: This section was removed in response to another comment.

Comment: Subsections (2)(A) and (3)(A) – These provisions should reference the model rule provisions promulgated as of April 28, 2006. Subsection (2)(A) should refer to §96.102 and §96.103, rather than §96.103 and §96.104. Subsection (3)(A) must include in the incorporation by reference §§96.106, 96.107, and 96.108.
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)1.A. – NOx Allowances, timing requirements. The date should be **October 31, 2006**. (See 40 CFR 51.123(o)(2)(ii)(B).)
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)2.A. – EPA suggests that this provision state the Missouri state budget amounts, rather than referring to the "approved state implementation plan". For example, this provision could read "The state trading program NOx annual budget allocated by the director under subparts (3)(B)2.B. and (3)(B)2.C. of this rule for a calendar year will equal 59,871 tons for 2009-2014 and 49,892 tons for 2015 and beyond."
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)2.B. – The Phase I NOx allocations in Table 1, while stated to total 59,871, add up to 59,879. The allowance allocations cannot exceed the State budget, so the allowance allocations must be modified.
Response: The program has amended the proposed rule language as commented.

Comment: Subsections (3)(B)2.B and (3)(C) – Missouri refers to "Table 1," but the table is not labeled.
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)2.E. – EE/RE – EPA assumes that Missouri plans to complete this provision for the proposal and will comment at that time.
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)3.A.(II), (3)(B)3.B.(I), and (3)(B)3.C. – The deadline for submission of requests for compliance supplement pool allowances should be **May 1, 2009**, rather than July 1 or March 1, 2009 as stated in Missouri's rule.
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)3.A.(III) – Please clarify this section. For example, what is meant by "the Acid Rain NOx emissions rate that would have applied", and what is meant by "state emission rate limit"? Also, the term "ERC" should be replaced by "**CAIR NOx allowances**".
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)3.B. – Remove the reference to "subparagraph A. of this paragraph", which is incorrect.
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)3.C.(II) and (3)(B)3.C.(III) – "paragraph 1. of this subsection" should be "**paragraph (I)**", and "ERCs" should be "**CAIR NOx allowances**".
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)3.C.(IV) – "paragraph 2. and 3." should be "**paragraph (3)(C)3.C.(II) and (3)(C)3.C.(III)**".
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (3)(B)3.C.(V) – "paragraph 4" should be "**paragraph (3)(C)3.C.(IV)**".
Response: The program has amended the proposed rule language as commented.

Comment: Subsection (4)(A) – This provision should reference the model rule provisions promulgated as of April 28, 2006.
Response: The program has amended the proposed rule language as commented.

Comment: Subsections (4)(B) and (4)(C) – These entire provisions must be removed. (See explanation in comment # 2.)
Response: The program has amended the proposed rule language as commented.

Comment: When Subsections (4)(B) and (4)(C) are removed, only Subsection (4)(A) remains. EPA suggests adding section HH to the incorporation by reference of the other model rule sections in Subsection (3)(A). Then, if Subsection (4)(A) is integrated in Subsection (3)(A), in Subsections (1)(C)2.G., (3)(B)3.A.(I), and (3)(B)3.A.(II), the reference to "subsection (4)" would need to be changed to "section (3)".
Response: The program has amended the proposed rule language.

Response to Comments From Kansas City Power and Light.

Comment: The following comments on the Missouri Department of Natural Resources Air Pollution Control Program's draft proposed rule in response to the Environmental Protection Agency's Clean Air Interstate Rule were submitted by the Kansas City Power and Light.

Within the workgroup process compromises were made as the rule was developed. For example, KCP&L believes that the Energy Conservation pool of NOx allowances could have been better used by being allocated to existing units. In addition, the tire-derived fuel provision provides extra allowances to utilities that burn tire-derived fuel. KCP&L currently would not utilize the benefits of the latter provision. Compromises were, however, reached on these issues.

The participant utilities agreed early in the process that the allocation of NOx allowances to all existing units in the state should be treated the same. The federal rule had provided for special provisions for "new units" that went on line after January 1, 2001. These provisions would have unfairly impacted Hawthorn 5A, the only "new unit" in the state, which started operations in May of 2001, just a few months past the deadline. The "new unit" provisions would have adjusted the average heat input used to allocate NOx allowances based on a heat rate of 7900 BTUs/KWHr. This adjustment is based on an assumption made by EPA that new units will operate at this heat rate level. KCP&L has over four years worth of CEM data on Hawthorn 5A that shows that its heat rate over that period has averaged around 10,500 BTUs/KWHr, consistent with our existing coal-fired units. To adjust allocations based on the "new unit" approach would have unjustly penalized the only "new unit" in the state. The other utilities in the state agreed to this approach for NOx allocations during the stakeholder process.

In its proposed rules, the department decided to treat allocations for mercury on the same basis as NOx, treating all existing units alike. KCP&L agrees with this approach and encourages the state to maintain it in the final rule. To do otherwise would again penalize "new units" by treating them differently from existing units. In Missouri's case this singles out only one unit in the state, Hawthorn 5A. The state's proposal decided to follow the model federal rule in allowing existing units that burn sub-bituminous coal to increase their heat input by a factor of 1.25 before calculating the allowance distribution based on each unit's proportional share of state-wide heat input. The utilities in the state agreed with this approach in the stakeholder process. The federal proposal, however, would deny this heat input factor to new units, those put in service after 2001, and would once again single out Hawthorn 5A as the only unit in the state that meets the new definition.

One utility in the state disagrees with the approach taken by the department and has commented that the proposed rule should be changed. KCP&L disagrees and supports the position taken by the department that the state rule should be consistent between the NOx allocations and the Mercury allocations, since all units are treated as existing units for NOx, the same should hold true for Mercury. Any federal assumption that "new units" are more easily controlled for mercury is not necessarily any more accurate than the assumption that "new units" can easily achieve a heat rate of 7900 BTUs/KWHr, an assumption that Hawthorn 5A's CEM data proves to be false. KCP&L has not yet installed any mercury control equipment at Hawthorn 5A and therefore does not have any more advantage over other state utilities for mercury control at their units.

In conclusion KCP&L supports the language in the proposed rule as your department after many months of review and participation by interested participants currently proposes it. Hawthorn 5A should be treated the same as all other electric generating units in the state.
Response: The program agrees with the comments regarding the compromises that were made during the workgroup process. The program has not made any changes to this draft rule in response to this comment and will address the comments on other rules in the corresponding responses.

Response to Comments From Empire District Electric Company.

Comment: The Empire District Electric Company (Empire) submits for the record these comments concerning draft proposed rules 10 CSR 10-6.362, 10 CSR 10-6.364, 10 CSR 10-6.366, and 10 CSR 10-6.368. Before proceeding to comments specific to each of these rules, Empire would like to thank the Missouri Department of Natural Resources for supporting the market-based principles of the Clean Air Interstate Rule and Clean Air Mercury rule, rather than potentially less beneficial, more expensive command-and-control approaches. We also thank the department staff for working closely with stakeholders to develop methods for the allocation of allowances.
Response: The program appreciates the support of Empire and all of the workgroup members during the workgroup and rule process.

Comment: Empire supports the inclusion of a set-aside for energy efficiency and renewable energy (EE/RE) projects. The term "Missouri electric utility" should include any utility that delivers electricity to Missouri customers. Also, Empire understands that the department is interested in attracting RE development to Missouri. For this reason, the EE/RE set-aside was split in half, with the first fifty percent available only to in-state projects. Discussion of this set-aside has also included the possibility to reduce the duration of time that out-of-state projects are eligible to receive allowances from the EE/RE set-aside. Empire would like to state our belief that double penalizing out-of-state renewable energy projects in this way adds another level of complexity to the rule and really provides no additional benefit.
Response: The program has not amended the proposed rule language in response to this comment. The program also received several comments supporting these provisions.

Comment: In part (3)(B)3.C.(I), (II), and (III) "as adjusted under paragraph 1. of this subsection" should read "as adjusted under part (I) of this subparagraph".
Response: The program has amended this language to more closely follow other rulemakings.

Comment: Under part (3)(B)3.C.(III), the subparts should be labeled (a), (b) and (c).
Response: The program has amended the proposed rule language as suggested.

Comment: In subpart (3)(B)3.C.(III)(c), the definition of "Unit's adjusted allocation" should read "the amount of CAIR NOx allowances requested under subparagraphs A. and B. of this paragraph, as adjusted under part (I) of this subparagraph."
Response: The program has amended this language to more closely follow other rulemakings.

Comment: In subpart (3)(B)3.C.(III)(c), the definition of "Total adjusted allocations for eligible units" should read "the sum of the amounts of allocations requested under subparagraphs A. and B. of this paragraph, as adjusted under paragraph 1. of this subsection by the units identified in subpart (3)(B)3.C. (III)(b)."
Response: The program has amended this language to more closely follow other rulemakings.

Comment: In subparagraph (3)(B)3.E., the definition of "Unit's adjusted allocation" should read "the amount of CAIR NOx allowances requested for the unit under subparagraphs A. and B. of this paragraph, as adjusted under part (I) of subparagraph (3)(B)3.C."
Response: The program has amended this language to more closely follow other rulemakings.

Comment: In subparagraph (3)(B)3.E., the definition of "Remainder from first allocation" should read "the amount of CAIR NOx allowances from the smaller pool not allocated under subparagraph (3)(B)3.C.
Response: The program has amended this language to more closely follow other rulemakings.

Comment: In subparagraph (3)(B)3.E., the definition of "Total adjusted allocations for eligible units" should read "the sum of the amounts of allocations requested for all units under subparagraphs A. and b. of this paragraph, as adjusted under part (I) of subparagraph (3)(B)3.C. by units that were not allocated ERCs under subparagraph (3)(B)3.C."
Response: The program has amended this language to more closely follow other rulemakings.

Comment: The final two paragraphs of subsection (3)(B) should be relabeled from (IV) and (V) to 4. and 5.
Response: The program has amended this language to more closely follow other rulemakings.

Comment: Paragraph (3)(B)4. should read "By November 30, 2009, the permitting authority will determine and submit to the Administrator the allocations under subparagraphs C. and E. of paragraph (3)(B)3."
Response: The program has amended this language to more closely follow other rulemakings.

Response to Comments From the United States Combined Heat & Power Association.

Comment: We understand that the Agency has adopted the United States Environmental Protection Agency's CAIR model for the NOx Annual Trading and NOx Ozone Season Trading Programs ("Model Rule"). As you know, the Model Rule utilizes "modified" output-based standards for NOx allowance allocation for cogeneration and distributed generation emissions units that commenced construction after January 1, 2001. USCHPA's position is that the Agency's adoption of the Model Rule's output-based standards for "new" emissions units will more equitably award NOx allocations to sources that efficiently generate power.

Indeed, U.S. EPA has recently employed output-based standards in proposed and final rulemakings. For example, U.S. EPA's recently finalized new source performance standards for stationary combustion turbines issued output based emissions standards for NOx and sulfur dioxide. *See Standards of Performance for Stationary Combustion Turbines*, 71 Fed. Reg. 38482 (July 6, 2006). In a proposed rule for revision new source review applicability for electric generating units ("EGUs"), U.S. EPA explained that output based emissions standards are beneficial from an efficiency and environmental perspective:

> We also believe that incorporating output-based emissions test has merit for several reasons. The primary benefit of output-based standards is that they recognize energy efficiency as a form of pollution prevention. Using more efficient technologies reduces fossil fuel use and also reduces the environmental impacts associated with the production and use of fossil fuels. Another benefit is that output-based standards allow sources to use energy efficiency as a part of their emissions control strategy. Energy efficiency as an additional compliance option can lead to reduced compliance costs, as well as lower emissions. We want to encourage use of efficient units that displace less efficient, more polluting units. This approach is especially desirable where EGUs are already subject to market-based systems such as the Acid Rain Program, NOx SIP Call, and State trading programs implementing the CAIR, as those programs increase incentives for using efficient units.

See Prevention of Significant Deterioration, Nonattainment New Source Review, and New Source Performance Standard: Emissions Test for Electric Generating Units; 70 Fed. Reg 61081 at 45-46 (October 20, 2005). Many states are also developing programs that promote CHP projects using output-based limits. USCHPA fully supports U.S. EPA's view regarding output-based standards and believes that this approach will gain wide acceptance as environmental regulatory agencies grapple with ways to achieve ever-increasing emissions reductions that are palatable to industry and environmental interest groups. It is also critical to note that the inclusion of output-based standards lowers the overall economic sot of pollution reductions by allowing sources to employ revenue-generating energy efficiency measures as a route to emissions compliance. By contrast, failure to include output-based standards compels businesses to direct scarce capital dollars toward end-of-pipe measures that increase there operating and capital costs to achieve the same ends, and are thus contrary to economic and environmental policy objectives.

The Model Rule also provides for allowance set-aside for "new" units. We strongly encourage the Agency to establish allowance set-asides for CHP projects to promote energy efficiency. Small CHP projects (projects serving generators less than 25 MWe) should also be eligible for allowance set-asides to facilitate their entry into the marketplace. Collectively, smaller CHP projects, which are often customer-owned, can significantly improve energy efficiency and provide economic benefits. Similar to the output-based standards referenced above, allowance set-asides should foster the development of CHP projects of all sizes that will eventually increase the amount of regional energy produced per unit of fuel consumed.

USCHPA encourages the Agency to explore alternatives that provide greater incentives to CHP projects than the Model Rule. The State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials ("STAPPA/ALAPCO") published in August 2005 a document entitled "Alternative NOx Allowance Allocation Language for the Clean Air Interstate Rule." The STAPPA/ALAPCO document contains several alternative language choices that promote CHP. These alternatives are designed to integrate seamlessly into the Model Rule. The STAPPA/ALAPCO document can be found at the following weblink: http://www.4cleanair.org/SearchResults.asp

Finally, promoting clean energy such as CHP will address critical issues facing this nation. The convergence between efficiency and power generation which CHP technologies provide will beget emissions reductions per unit of energy generated but also address homeland security issues such as energy independence and greenhouse gas reduction. Moreover, the Agency's support for CHP should spur additional CHP development and lead to even greater emissions reductions and efficient generation.
Response: The program agrees that combined heat and power projects provide a variety of benefits. However, the CAIR and CAMR rulemakings were developed to participate in EPA's regional trading program and were developed through a stakeholder participation process. These rules are the result of the discussions in those meetings. Therefore, the program has not amended the proposed rule in response to this comment.

Response to Comments From the City Utilities of Springfield.

Comment: In the main, City Utilities supports the rule language as written. However, we believe that section (3)(B) of the rule should include a stronger reference to permanent unit allocations, similar to the Acid Rain provisions for SO2 allocations (40 CFR Part 73). City Utilities believes this regulatory certainty is necessary in order for affected sources to make prudent business decisions and plan for future control measures. For this reason, City Utilities requests removal of any calendar year reference pursuant to the allowance allocation provisions.

Response: The program has added language to clarify that the allocations to be used are those found in the table.

Comment: Further, we support the language of the May 4, 2006 “Proposed Rule Language for EE/RE Set-Aside in CAIR Annual NOx Rule.” Specifically, we support the proposed Energy Efficiency/Renewable Energy language under E(1)(V)(c) which provides preference for Missouri based projects when awarding CAIR allowances from the EERE set-aside pool. City Utilities believes that all Missourians stand to benefit from energy efficiency and renewable projects like the Noble Hill Landfill Gas Renewable Energy Center.
Response: The program agrees with this comment and has not made any changes to the proposed rule language.

Response to Comments From Chillicothe Municipal Utilities.

Comment: Chillicothe Municipal Utilities (CMU) previously provided comments in support of the proposed regulations because there was an exemption for affected units that have low emissions or low run hours. EPA has commented that the exemption for such units must be removed in order for Missouri to participate in the regional trading program.

Without the exemption for low emission or low run hour units, CMU will be forced to participate in the NOx and SO2 trading programs and be required to purchase allowances for their future emissions. While this will add a significant cost to future operations, the most significant cost will be imposed with future monitoring to be Part 75 requirements for Low Mass Emission (LME) units. CMU has always monitored the run time and fuel consumed for the combustion turbines in order to report emissions and to comply with permit conditions applicable to the combustion turbines. However, the Part 75 monitoring requirements are much more cumbersome and costly than Missouri currently allows for demonstrating permit compliance and annual emission reporting.

Without the exemption, CMU requests the proposed rules allow alternative monitoring, similar to what is currently allowed in Missouri for permit compliance or EIQ reporting, in lieu of Part 75 requirements for units that qualify as LME. The Part 75 procedures allow default values that are too conservative, essentially over reporting emissions. Over reporting reduces the budget of NOx emissions available to participants in the trading program and increases the cost per allowance when more must be purchased than actually used. If a source wants to use site specific emission rates for reporting, the Part 75 procedures require specific testing procedures and frequencies that must be met to use site specific test results, with re-testing required on a five-year and possibly more frequent time periods. For units with very low run hours, the time to conduct testing can approach the annual run time a unit would otherwise operate.

For low emission or low run hour units CMU requests the agency include a provision in each of the rules referenced above that allows alternative monitoring procedures similar to what is already in use for reporting emissions. The added cost to refine the emission

rates for low emission units does not justify the cost that will be incurred to refine the emission. And the difference in emissions to report will be insignificant for these low emission units. Use of the default emission factors allowed for LME units will also impose a substantial penalty to the source that determines its emissions from default values because the source will be required to buy more allowances than are needed since the default values over report actual emissions.
Response: The program agrees with the comments. However, in order to be included in EPA's Regional Trading program, the rule must not change the monitoring requirements. EPA submitted comments to the rule stating that they will not approve any of these changes.

Response to Comments From the Associated Electric Cooperative, Inc.

Comment: Associated Electric (AECI) would like to comment that the communication and cooperation afforded by the CAIR/CAMR stakeholder meetings was to the benefit of all parties. Implementation of such complex rule language is a major undertaking and the Missouri Department of Natural Resources is to be commended for initiating a fair and open forum. We look forward to engaging in such efforts in the future.
Response: The program appreciates the support of AECI and all of the workgroup members during the workgroup and rule process.

Comment: Second, AECI supports the rule language and unit allocations as written in 10 CSR 10-6.363, 6.3264, and 6.366 with the qualified exceptions. Section (3)(B) of both the annual and seasonal NOx rules detail when and how the agency will submit to the Administrator the unit allocation per an approved state implementation plan. The language under these sections does not make it clear that the unit allocations will be permanent for the duration of these rules. AECI requests that language be added under this section to clarify that the unit allocations are permanent. On a clerical note, in paragraph (1)(B)1 of the SO2 rule, "NOx" should be changed to "SO2."
Response: The program has added language to clarify that the allocations to be used are those found in the table.

Comment: Third, we support the language of the May 4, 2006 "Proposed Rule Language for EE/RE Set-Aside in CAIR Annual NOx Rule." Specifically, we support the proposed EE/RE language under E(1)(V)(c) which provides preference for Missouri based projects when awarding CAIR allowances from the EE/RE set-aside. AECI believes that all Missourians stand to benefit from energy efficiency and renewable energy projects. The fruition of proposed renewable energy projects, such as the planned wind projects in Northwest Missouri, will result in construction and maintenance jobs, income to local land owners, and will generate local and state tax revenue. While other such projects in neighboring states may provide some offsets for fossil fuel generation in Missouri, they will not directly benefit Missourians as stated above. In summary, AECI believes the preference is good policy and is appropriately placed.
Response: The program agrees with this comment and has not made any changes to the proposed rule language.

Response to Comments From Ameren.

Comment: As a general comment, Ameren strongly supports the stakeholder process adopted by the Air Pollution Control Program to develop the proposed regulations. The stakeholder process provides an opportunity for all interested parties to participate in the rulemaking and communicate their concerns to the Air Program. Ameren supports implementation of the federal Clean Air Interstate Rule and the Clean Air Mercury Rule including the adoption of the trading programs. We look forward to continued open dialogue with the Program to finalize the rules and implement the federal programs.
Response: The program appreciates the support of AECI and all of the workgroup members during the workgroup and rule process.

Comment: Ameren supports the proposed Clean Air Interstate Rule Annual NOx Trading Program rule and offers comments to clarify and improve the proposal as well as updated baseline emission data for AmerenUE and AEG units. The updated emission data is submitted as an Excel file. Additional data that supports the emission data is also submitted as separate Excel files. Ameren supports the concept of permanent NOx allowance allocations and their inclusion in the rule. The updated emission data may alter the allowance allocations for certain units.
Response: The program has amended the proposed rule as suggested.

Comment: Ameren supports the proposed exemption for units with low emissions or low hours of operation. The exemption provides relief for units that are not currently affected by the Acid Rain Program and is consistent with the exemptions provided in several existing Missouri regulations including the statewide NOx trading rule (10 CSR 10-6.350) and the NOx RACT rule for the St. Louis area (10 CSR 10-5.510). AmerenUE has at least eight combustion turbine units including Fairgrounds, Howard Bend, Meramec CT1 and CT2, Mexico, Moberly, Moreau and Viaduct that are eligible for exemption. On average, the units have operated less than 100 hours per year over the last six years. The units are not required to have continuous emission monitoring systems under existing regulations. A requirement to install, certify and operate a continuous emission monitoring system would impose both an economic and resource burden, especially since the units have very low hours of operation.
Response: The program agrees with this comment. However, EPA has comment that these provisions are not approvable. Therefore, the provisions have been removed.

Comment: Ameren suggests revision to certain dates related to application and award of allowances from the compliance supplement pool (CSP) in subsection (3)(B)3 of the proposed rule. Ameren suggests that the deadline for sources to apply for early reduction allocations from the CSP be changed from July 1, 2009 to March 1, 2009 (see (3)(B)3A(II)). The March 1 deadline would afford sources ample time to prepare an application and would allow the program to make allocations sooner. Ameren suggests that the allocation deadlines in (3)(B)3C(IV) and (V) be changed from November 30, 2009 and January 1, 2010 respectively to July 1, 2009. The proposed changes have two benefits. The Program will have the same amount of time to review the applications and allocate allowances and sources will know how many allowances are allocated to their

units sooner. The annual NOx program is effective January 1, 2009. Sources need to know the number of allowances that will be allocated from the CSP as soon as possible to facilitate compliance with the NOx limitation in 2009.
Response: The program has amended these date in response to EPA's comments.

Comment: Ameren also suggests that the language be clarified to use the same numbering to reference paragraphs in the rule. For example, the language in (3)(B)3C(I) is referenced in (3)(B)3C(II) as "paragraph 1" instead of paragraph (I). Roman numeral (I) should be used to reference the paragraph if the Roman numeral is used to identify the section in the rule. A similar instance occurs in (3)(B)3C(IV) where the reference to "paragraphs 2 and 3" presumably reference paragraphs (II) and (III).
Response: The program has amended the proposed rule as suggested.